

REMARKS

Below, the applicant's comments are preceded by related remarks of the examiner set forth in small bold font.

1. Claims 1-8, 10-17, 23, 24, 31 are rejected under 35 U. S. C. 103(a) as being unpatentable over Shoemake (U. S. Pub. No. 2002/0105925) in view of Borg (U. S. Patent No. 5,355,514). Referring to claim 1, Shoemake discloses a method comprising , monitoring a variable rate data communication channel to determine its signal to noise ratio (paragraph [0004], figures 6B, 6C, 7B and 7C), and adjusting the data transmission rate of the variable rate data transmission channel based on its signal to noise ratio (paragraphs [0035], [0038], [0042], [0044], [0045], and figures 6B, 7B and 8). However, Shoemake fails to disclose monitoring a non-transmission period to determine its signal-to-noise-ratio. But, Borg discloses monitoring a non-transmission period to determine its signal-to-noise-ratio (abstract, column 3, lines 13-55). Therefore at the time of the invention it would have been obvious to a person of ordinary skill in the art to combine Shoemake (U.S. Pub. No. 2002/0105925) with Borg (U. S Patent No. 5,355,514) in order to determine the transmission quality as suggested by Borg.

Claim 1 has been amended to include some of the wording of allowed claim 9 and to remove some of the previous wording of claim 1. Neither Shoemake or Borg describe or suggest "adjusting the data transmission rate of the variable rate data communication channel if the signal-to-noise ratio of the communication channel cannot be determined for a defined period of time" as in the applicant's claim 1.

**Regarding claims 2 and 11...
Regarding claims 4 and 13...
Regarding claims 5 and 14...
Regarding claims 6 and 15...
Regarding claims 7 and 16...
Regarding claim 8...**

Claims 2-8 and 11-16 are patentable for at least the same reasons as the claims on which they depend.

Regarding claim 10...

Claim 10 has been amended to include the some of the limitations of allowed claim 18.

Regarding claim 23, Shoemake discloses a computer program product residing on a computer readable medium having instructions stored thereon which when executed by processor (paragraphs [0032], [0034], and [0042]), cause that processor to, monitor a variable-rate data communication channel to determine its signal to noise ratio (paragraph [0004], figures 6B, 6C, 7B and 7C), and adjust the data transmission rate of the variable rate data communication channel based on its signal to noise ration (paragraphs [0035], [0038], [0042], [0044], [0045], and figures 6B, 7B and 8). However, Shoemake fails to disclose monitoring a non-transmission period to determine its signal-to-noise-ratio. But, Borg discloses monitoring a non-transmission period to determine its signal-to-noise-ratio (abstract, column 3, lines 13-55). Therefore at the time of the invention it would have been obvious to a person of ordinary skill in the art to combine Shoemake (U. S. Pub. No. 2002/0105925) with Borg (U. S Patent No. 5,355,514) in order to determine the transmission quality as suggested by Borg.

Claim 23 has been amended in a manner similar to claim 1.

Regarding claim 31, Shoemake discloses a method comprising: bidirectional communication channel including receive side a receive side for receiving data from a remote side and a transmit side for transmitting data to a remote device (figure 2) and adjusting the data transmission rate of the variable rate data communication channel based on its signal to noise ratio (figures 6B, 6C, 7B, 7C). However, Shoemake fails to disclose monitoring a non-transmission period to determine its signal-to-noise-ratio. But, Borg discloses monitoring a non-transmission period to determine its signal-to-noise-ratio (abstract, column 3, lines 13-55). Therefore at the time of the invention it would have been obvious to a person of ordinary skill in the art to combine Shoemake (U. S. Pub. No. 2002/0105925) with Borg (U. S Patent No. 5,355,5 14) in order to determine the transmission quality as suggested by Borg.

Claim 31 has been amended in a manner similar to claim 1.

2. Claims 25-30 ...

Claims 25-30 are patentable for at least the same reasons as the claims on which they depend.

3. Claims 9, 18-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
Regarding claims 9, 18-22 the applied references fail to disclose or render, obvious the claimed limitations that iteratively adjusting the data transmission rate of the variable rate data communication channel if the signal to noise ratio of the channel can not be determined for a defined period of time as specified in the claim.

The applicant acknowledges the allowance of claims 9 and 18-22 and has amended claims 1 and 10 to include some of the limitations of claim 9 and 18 respectively.

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4. Claims 32 and 33 are allowed.

Regarding claims 32 and 33, the applied references fail to disclose or render, obvious the claimed limitations that iteratively adjusting the data transmission rate of the variable rate data communication channel if the signal to noise ratio of the channel can not be determined for a defined period of time as specified in the claim.

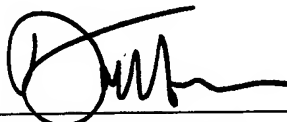
The applicant acknowledges the allowance of claims 32 and 33 and has added new dependent claims 34 and 35. The applicant has also added new independent claim 36 and new dependent claims 37-41.

The fact that the applicant has addressed certain comments of the examiner does not mean that the applicant concedes any other positions of the examiner. The fact that the applicant has asserted certain grounds for the patentability of a claim does not mean that there are not other good grounds for patentability of that claim or other claims. The fact that the applicant has amended a claim does not mean that the applicant conceded the examiner's position with respect to that claim.

Enclosed is a \$212.00 check for excess claim fees. Please apply any other charges to deposit account 06-1050.

Respectfully submitted,

Date: 5/17/4



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